



U.S. Citizenship  
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Services

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FILE: WAC 03 075 51058 Office: CALIFORNIA SERVICE CENTER Date: AUG 03 2004

IN RE: Petitioner:   
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

to Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a pre-school/daycare center. It seeks to employ the beneficiary as a teacher/activity specialist, and endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the proffered position was not a specialty occupation. On appeal, counsel submits a brief.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or

- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceedings before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a teacher/activity specialist. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: plan, develop, organize, and evaluate instructional programs for preschool clients; devise, formulate, and put together curriculum and lesson plans and other instructional materials to meet individual needs of students, considering such factors as age group and gender; confer and collaborate with families, teaching specialists, social services workers, and other allied professionals to develop a personalized educational program for pupils with individual and unique requirements; direct and coordinate the instructional programs of young clients in minimally assisted skills required for independent living and self-sufficiency such as hygiene, grooming, safety, and food needs; plan, develop, and help administer training programs in daily routine activities and regimens to develop students' feelings of self-worth and self-confidence as young members of society; evaluate and assess activities and programs for possible revisions or improvements; and prepare and submit written reports to house administrators on the outcome of such daily activities in order to address problem areas to ensure the most efficient and highest quality of tuition and daycare services rendered to pupils and their families at all times. The petitioner requires a minimum of a bachelor's degree in early childhood education for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation.

Upon review of the record, the petitioner has failed to establish that the offered position meets the requirements of the above cited regulatory criteria. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for teachers, as described in the *Handbook*. The *Handbook* notes that all 50 States and the District of Columbia require public school teachers to be licensed. Licensing, however, is not a uniform requirement in private institutions such as that operated by the petitioner. The *Handbook* further notes that licensing requirements for preschool teachers vary by State and that requirements for public school teachers are generally higher than those for private school teachers. Some States require a bachelor's degree in early childhood education and others require an associate degree, while others require certification by a nationally recognized authority. Nothing in the record establishes, however, that a baccalaureate or higher degree in a specific specialty is normally the minimum requirement for entry into the proffered position in private preschool/daycare centers. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of that assertion the petitioner submitted four job advertisements. First, four advertisements are insufficient in scope to establish the educational requirements for pre-school teachers/activities specialists in the industry as a whole. Second, the advertisements submitted do not establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. One advertisement states that a bachelor's degree is preferred, not required for entry into the position. One states that candidates must have at least a bachelor's degree, but does not state that the degree must be in any particular discipline. Another requires only a high school diploma with childcare experience. The last requires only that the candidate be 18 years of age, have completed 12 college semester units in early education, and be able to pass security requirements for entry into the position. The advertisements submitted are in accord with the statements contained in the *Handbook*, that a bachelor's degree in a specific specialty is not the minimum requirement in the industry for entry into the proffered position. The position is routinely staffed by individuals with less than a baccalaureate level education.

The petitioner has failed to establish that it normally requires a degree or its equivalent for entry into the proffered position, and states that this is the first position in its organization requiring a bachelor's degree as the position will concentrate on first grade level education for its students. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). It is important to note, however, that the petitioner's advertisement submitted in response to the director's request for evidence indicates that it presently offers education for first grade students, yet none of the petitioner's present teachers possess a bachelor's degree. It is, therefore, apparent that the petitioner does not normally require a minimum of a bachelor's degree to perform the duties of the offered position.

Finally, the duties of the proffered position are routine for pre-school teachers in the industry. They are not so complex or unique that they can be performed only by individuals with a degree in a specific specialty. Nor are the duties so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish any of the abovementioned regulatory criteria for classifying the offered position as a specialty occupation. Accordingly, the director's decision will not be disturbed.

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The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.